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CHAPTER Env-Dw 1100 DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

Statutory Authority: RSA 486:14, I

REVISION NOTE:

Document #8702, effective 8-24-06, readopted with amendments and renumbered former Parts Env-C 510 through Part Env-C 521, the State Drinking Water Revolving Loan Fund Program, under a new subtitle as Chapter Env-Dw 1100. The redesignation from subtitle Env-C to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

Document #8702 replaces all prior filings for rules formerly in Env-C 510 through Env-C 521. The prior filings for rules in former Env-C 510 through Env-C 521 include the following documents:

#6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-9

#6697, eff 2-25-98

#8575, INTERIM, eff 2-25-06, EXPIRED: 8-24-06

PART Env-Dw 1101 PURPOSE AND APPLICABILITY

Env-Dw 1101.01 Purpose. The purpose of this chapter is to identify:

(a) The procedures and criteria applicable to public water systems that apply to the state for financial assistance from the drinking water state revolving loan fund (DWSRF) established pursuant to RSA 486:14; and

(b) The requirements for completing projects financed under the DWSRF and repaying or otherwise returning such assistance.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1101.02 Applicability. The rules in this chapter shall apply to any community or non-community non-profit water system that borrows or wishes to borrow funds from the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

PART Env-Dw 1102 DEFINITIONS

Env-Dw 1102.01 “Act” means the federal Safe Drinking Water Act, 42 U.S.C. §§300f through 300j-26.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.02 “Administration costs” means expenses associated with managing the DWSRF program. Such costs include state costs for engineering and environmental review of proposed projects, state oversight, accounting, and disbursement functions.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Dw 1102.03 “Allotment” means funds that are available for obligation each fiscal year.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.04 “Applicant” means the entity that applies for a loan from the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.05 “Application” means the written document(s), with attachments, through which a loan is requested.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.06 “Best available technology (BAT)” means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available, taking cost into consideration.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.07 “Binding commitment” means a legal obligation by the state to a recipient that defines the terms and the timing for assistance under the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.08 “Bypass procedure” means the process used to skip over an applicant on the priority list that is not ready to proceed with a project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.09 “Capitalization grant” means funds made available to the state by the federal government in accordance with 42 U.S.C. §300j-12.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.10 “Commissioner” means the commissioner of the department.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.11 “Construction” means the erection, building, acquisition, alteration, remodeling, improvement, or extension of any components of a public water system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Dw 1102.12 “Contingency section” means the portion of a priority list consisting of projects that might receive loans due to a bypass procedure or due to additional funds becoming available.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.13 “Department” means the New Hampshire department of environmental services.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.14 “Disbursement” means a transfer of funds from the DWSRF to a recipient.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.15 “Drinking water project” means either:

- (1) An infrastructure project; or
- (2) A source water protection project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.16 “Eligible entity” means:

- (a) A municipality;
- (b) Any legal entity, such as a sole proprietorship, partnership, corporation, association, or non-profit organization, that owns a community water system; or
- (c) A non-profit organization that owns a non-transient, non-community water system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.17 “Engineering services” means consultations, investigations, reports, or services for the design of projects within the scope of professional engineering.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.18 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, construction, or implementation of a project, such as, but not limited to, a delay caused by an act of nature or war.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.19 “Financial assistance” means funds provided from the DWSRF to pay in whole or in part for a department-approved project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Dw 1102.20 “Fundable portion” means that portion of a project priority list that identifies projects scheduled for financial assistance in the current fiscal year.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.21 “Funding year” means the first year that a project is included on the fundable portion of the priority list.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.22 “Initiation of operation” means the date on which the project that was funded from the DWSRF is placed into use for the purposes for which it was planned, designed, and built.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.23 “Infrastructure project” means a project intended to control, improve, or develop a water system’s source of water or its treatment, storage, or distribution facilities, including the requisite planning, design, and construction.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.24 “Intended use plan (IUP)” means a document prepared each year by the department that identifies the anticipated uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.25 “Land acquisition” means the purchase of land for infrastructure projects or for protective easements within the source water protection area, including associated services such as appraisal(s) and title search(es).

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.26 “Maintenance” means actions taken to preserve the functional integrity and efficiency of equipment and structures. The term includes preventive maintenance, corrective maintenance, and replacement of equipment.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.27 “Market rate” means for each period beginning October 1 and ending the following September 30, the 11 G.O. Bond Index published the first week of October.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.28 “Maximum contaminant level (MCL)” means “maximum contaminant level” as defined in RSA 485:1-a, VII; namely, “the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of

turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from the definition.”

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.29 “Municipality” means a city, town, county, district, precinct, or other public body, including an intermunicipal agency of 2 or more of the foregoing entities, created under state law, that owns a public water system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.30 “Operation and maintenance” means activities required to assure the safe, dependable, and economical function of a water system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.31 “Operation” means control of the processes and equipment which make up the drinking water system. The term includes financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.32 “Original loan agreement” means the original contract between the department and the recipient through which the department agrees to provide funds from the DWSRF to the recipient and the recipient promises to repay the funds to the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.33 “Planning” means the process of evaluating alternative solutions to drinking water system problems and the selection of the most cost-effective alternative through a systematic screening procedure.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.34 “Planning portion” means that part of a project priority list containing all projects outside the fundable portion of the list.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.35 “Pledge” means the act or process through which a recipient commits, obligates, and encumbers its real or personal property or its existing or anticipated revenues to the department as security and means for repayment of the financial assistance received by the recipient from the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06



Env-Dw 1102.36 “Project” means a drinking water project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.37 “Project cost” means the applicant’s total direct and incidental costs of acquiring, constructing, and implementing the project for which assistance is sought.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.38 “Project priority lists” means the 2 prioritized lists of projects, one pertaining to infrastructure projects and the other pertaining to source water protection projects, for which DWSRF assistance is expected in current and subsequent years.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.39 “Project priority points” means the total number of points assigned to a project by using the appropriate priority ranking formula.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.40 “Reallotment” means the assignment of previously-allotted but unused funds to one or more other projects.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.41 “Recipient” means an applicant to whom funding from the DWSRF is awarded.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.42 “Repayment” means the recompense of principal, interest, and administrative fee amounts on loans.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.43 “Replacement” means the installation of new or refurbished equipment, accessories, or appurtenances for existing equipment, accessories, or appurtenances that no longer perform as originally intended.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.44 “Scheduled completion date” means the date stated in the original loan agreement on which the project that received DWSRF funds is intended to be placed into use for the purposes for which it was planned, designed, and built.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Dw 1102.45 “Secondary maximum contaminant level (SMCL)” means “secondary maximum contaminant level” as defined in Env-Ws 302.69 or successor rules in subtitle Env-Dw.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.46 “Security” means an applicant’s real or personal property that is pledged by the applicant to the department to ensure repayment to the department.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.47 “Significant adverse comments” means comments that cause the department to conclude that the recommended action might not be the alternative with the best balance between minimizing environmental impact and maximizing benefit to the water system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.48 “Source water protection (SWP)” means protection of the source of drinking water by delineating the area to be protected, identifying land uses which may threaten its use for water supply, managing or eliminating identified threats, and contingency planning.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.49 “Source water protection area” means an area that contributes water to a well or surface water intake for a water system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.50 “Source water protection project” means a project that addresses one or more components of source water protection, such as development and implementation of a source water protection program, a construction project that is preventative, or a source water protection-related land acquisition within a source water protection area.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.51 “State” means the state of New Hampshire.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.52 “State match” means funds equaling 20 percent of the capitalization grant which the Act requires the state to deposit into the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.53 “Substantial completion” means the date on which the project can function as it was originally designed.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.54 “Supplemental loan agreement” means an amendment to the original loan agreement executed between the state and the recipient stipulating the final project cost and repayment terms.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.55 “User charge” means a charge levied on users of a water system for the user’s share of the cost of operation and maintenance, including replacement, of the system.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1102.56 “Water system” means a public water system as defined by RSA 485:1-a, XV.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

#### PART Env-Dw 1103 ESTABLISHMENT OF DWSRF

Env-Dw 1103.01 Loan Fund. As provided in RSA 486:14, I(a):

(a) A dedicated drinking water state revolving loan fund (DWSRF) has been established for the purposes of providing low-interest loans for the planning, design, and construction or implementation of drinking water infrastructure and source water protection projects; and

(b) The DWSRF shall be administered by the commissioner.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1103.02 Deposits to DWSRF. Pursuant to RSA 486:14, the state shall deposit in the DWSRF the following:

(a) Capitalization grants as appropriated by the United States Congress;

(b) The state match as appropriated by the general court, deposited to the DWSRF on a schedule coinciding with the payment of federal funds into the DWSRF;

(c) Repayments of principal and interest by recipients;

(d) Investment earnings credited to the assets of the DWSRF, which shall become part of the total assets of the DWSRF; and

(e) Any other funds as may be appropriated or available in excess of the mandatory state match.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1103.03 Public Records. All records of the department relating to the financial assistance program covered by the rules of this chapter shall be public records available for public inspection by any interested person during normal business hours.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

PART Env-Dw 1104 ELIGIBILITY AND APPLICATION REQUIREMENTS

Env-Dw 1104.01 Eligible Projects and Costs.

(a) Infrastructure projects that are eligible for financial assistance from the DWSRF shall be as follows:

- (1) Source development;
- (2) Installation or enhancement of treatment facilities so as to meet MCLs or SMCLs;
- (3) Rehabilitation or replacement of distribution systems and facilities; and
- (4) Installation or enhancement of storage facilities.

(b) SWP projects that are eligible for financial assistance from the DWSRF shall be as follows:

- (1) Development of one or more components of a SWP project;
- (2) Implementation of one or more components of a SWP project;
- (3) SWP-related preventative construction projects; and
- (4) Acquisition of land for a SWP project in SWP areas.

(c) Eligible construction costs shall be based on the lowest bidder or competitive quotation.

(d) Eligible land acquisition costs for construction projects shall be limited to acquisition of land that is needed to locate the eligible project, the value of which shall be calculated based on fair market value as determined by a certified appraisal.

(e) SWP-related land acquisition shall be from a willing seller, with costs based on fair market value as determined by a certified appraisal.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.02 Additional Eligibility Criteria for Infrastructure Projects. In order to be eligible for financial assistance from the DWSRF, infrastructure projects also shall:

- (a) Comply with applicable federal requirements;
- (b) Comply with applicable state design criteria as specified in Env-Ws 300 or successor rules in subtitle Env-Dw;
- (c) Meet eligible design capacity, which shall be determined in accordance with the following:
  - (1) The eligible design capacity shall be based on average daily flow and peak flows in accordance with population and per capita flow figures;

(2) Eligible design capacity for treatment facilities shall be based on a period of 20 years from the estimated date of initiation of operation; and

(3) Eligible design capacity for water distribution mains and intake or raw water mains shall be based on 40 years from the estimated date of initiation of operation; and

(d) If a distribution system, consist of the common lines of the water system that distribute water directly from source or treatment facilities.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.03 Additional Eligibility Criteria for SWP Projects. In order to be eligible for financial assistance from the DWSRF, SWP projects also shall:

(a) Comply with applicable federal requirements;

(b) Occur within or be focused on SWP areas developed in accordance with RSA 485:48; and

(c) If easements are obtained, not restrict activities unrelated to water supply protection.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.04 Pre-application Procedures.

(a) If requested by an applicant, the department shall meet with the applicant to provide information, advice, instruction, guidance, and other information that may be helpful to the applicant on the scope of work and level of effort needed to define eligible projects and complete the application process.

(b) To determine the eligibility of a proposed project for funding, the applicant shall provide the following information to the department on a pre-application form obtained from the department:

(1) The name and location of the water system;

(2) The water system's EPA identification number;

(3) Whether the water system is owned by a public or private entity;

(4) The name, mailing address, and daytime telephone number of the individual who can answer questions on behalf of the applicant regarding the project;

(5) A description of the proposed project;

(6) A description of the need for the proposed project, including whether there are any public health issues that will be addressed by the proposed project;

(7) An estimate of the project costs;

(8) The anticipated date that the project will start; and

(9) The name and title of the individual authorized by the applicant to sign the pre-application form on behalf of the applicant.

(c) The individual authorized by the applicant to sign the pre-application form shall sign and date the pre-application form. Such signature shall constitute certification that the information provided is true, complete, and not misleading to the knowledge and belief of the applicant.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.05 Department Action on Pre-application.

(a) The department shall determine that the applicant's project is eligible for financial assistance from the DWSRF if:

- (1) The applicant is an eligible entity;
- (2) The proposed project meets the criteria of Env-Dw 1104.01 and the applicable criteria of Env-Dw 1104.02 or Env-Dw 1104.03; and
- (3) The pre-application form is complete.

(b) The department shall notify the applicant in writing of its determination.

(c) If the department determines that the applicant's project is not eligible, the notice sent pursuant to (b), above, shall specify the reason(s) for the determination.

(d) In response to being notified that a project is ineligible, the applicant may modify or supplement any information and submit a new pre-application form to the department.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.06 Application Procedures. To apply to receive financial assistance from the DWSRF, the applicant shall submit to the department:

- (a) A complete application as specified in Env-Dw 1104.08;
- (b) A planning document as specified in Env-Dw 1104.09, if the proposed project is an infrastructure project; and
- (c) Verification of a revenue program as specified in Env-Dw 1104.10.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.07 Conditions Arising from Application. By applying for financial assistance, each applicant shall be deemed to have agreed to the following:

(a) From the time of first application for financial assistance for a project throughout all stages of construction and implementation, and at any other time while any assistance from the DWSRF to the applicant is outstanding, the applicant shall allow the department to inspect:

- (1) The project and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and
- (2) Any and all books, accounts, records, contracts or other instruments, documents or other information possessed by the applicant or its contractors, agents, employees or representatives

which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds;  
and

- (b) After project completion, the recipient shall allow the department to conduct periodic site visits.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.08 Application. An applicant for financial assistance from the DWSRF shall provide the following information to the department on or with a form provided by the department:

- (a) The applicant's name, mailing address, and daytime telephone number;
- (b) The name and title of an individual who can answer questions about the application on behalf of the applicant, and the individual's mailing address and daytime telephone number, if different from that of the applicant;
- (c) A brief description of the proposed project;
- (d) The estimated total project cost including cost support data;
- (e) The estimated project construction period, including estimated dates for start of design, award of construction contract, and project completion;
- (f) The amount of the loan requested;
- (g) The proposed repayment term;
- (h) Estimated cash flow requirements;
- (i) The source(s) of loan repayment funds;
- (j) For SWP projects, a brief explanation of the need for the project;
- (k) A resolution adopted by the governing body of the applicant authorizing filing of the application and identifying the individual(s) who have been authorized to sign the application on behalf of the applicant, certified and sealed by:
  - (1) The town clerk, if the applicant is a municipality; or
  - (2) The entity's secretary or comparable official, if the applicant is other than a municipality;
- (l) Evidence of review through the New Hampshire intergovernmental review process as coordinated through the New Hampshire office of energy and planning (OEP);
- (m) A letter signed by the authorized representative certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance;
- (n) Identification of all anticipated sources of funding for the proposed project;
- (o) Evidence of approval of a governmental authority or other appropriate authority to raise, appropriate, and spend requested funds on the described project;
- (p) Cash flow projections;
- (q) Evidence of compliance with applicable federal requirements;

- (r) A letter signed by the authorized representative stating whether or not the applicant has any outstanding debt;
- (s) A copy of the applicant's latest annual report; and
- (t) A completed Public Water System Check-up and Self-Assessment form.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.09 Planning Document.

(a) The applicant shall prepare a planning document as specified in (c), below, to allow the review of the proposed project and alternatives thereto from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness, and environmental compatibility.

(b) The applicant shall submit the planning document to the department as specified in Env-Dw 1104.08.

(c) The planning document shall include the following:

- (1) Identification of the planning area boundaries and characteristics and the existing needs related to the water system;
- (2) A cost-benefit analysis of feasible water systems or conveyance alternatives capable of meeting state and federal requirements, which details all monetary costs including the present worth or equivalent annual value of all capital costs and operation;
- (3) All information necessary for the design of the proposed project and alternatives;
- (4) The most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees for engineering services, fees for legal services, fees for financial services, contingencies at 10 percent, and interest during construction; and
- (5) A statement of the legal, institutional, managerial, and financial capacity to construct, operate, and maintain the water system as specified in Env-Ws 363 or successor rules in subtitle Env-Dw.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.10 Revenue Program.

(a) The applicant shall establish:

- (1) A user charge system to generate sufficient revenues for operation and maintenance, including replacement; and
- (2) A dedicated source or sources of revenue to repay the loan.

(b) The applicant shall demonstrate, at the time of the actual application, that a dedicated source of revenue is available to repay the loan. Revenue shall be considered dedicated when the recipient passes an ordinance or other binding resolution committing a source or sources of funds for repayment. The ordinance



or other binding resolution dedicating a source of funding for repayment of the loan shall be adopted prior to finalization of the loan agreement.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1104.11 Application Processing.

- (a) The department shall notify the applicant in writing if the application is incomplete.
- (b) The department shall deny the application if it does not meet the requirements of Env-Dw 1104.06.
- (c) Upon review of the complete application, the department shall notify the applicant in writing of whether the application is approved or denied.
- (d) If the application is denied, the notice shall specify the reason(s) for the denial.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

PART Env-Dw 1105 PROJECT PRIORITIZATION; INTENDED USE PLANS

Env-Dw 1105.01 Prioritization of Proposed Projects.

- (a) Each application shall be ranked according to a ranking formula established in each fiscal year's Intended Use Plan (IUP) based on the following objectives:
  - (1) Achieving compliance with the Act;
  - (2) Furthering public health protection; and
  - (3) Maintaining affordability for the water user.
- (b) If 2 or more projects on the same list have equal points under the project priority system, the project with the greatest existing population served shall receive the higher ranking.
- (c) Projects shall be listed in order of priority based on the information presented in the application as evaluated under the priority ranking system specified in (a), above.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1105.02 Project Priority Lists.

- (a) The department shall prepare and maintain a project priority list for infrastructure projects and a separate project priority list for SWP projects.
- (b) Each project priority lists shall comprise:
  - (1) A fundable portion, listing all proposed projects scheduled for financial assistance during the current fiscal year within the limits of currently-available funds; and
  - (2) A planning portion, listing all projects outside the fundable portion of the list that are anticipated to receive financial assistance in the future, including a contingency section.
- (c) Each project priority list shall include the following information:

- (1) The name of the applicant;
- (2) The name and location of the applicant's water system;
- (3) A brief description of the project;
- (4) The population served by the water system;
- (5) Disadvantaged community status;
- (6) Project priority points; and
- (7) The amount of financial assistance requested.

(d) The department shall hold a public hearing in accordance with the provisions of Env-C 200 applicable to non-adjudicative hearings to receive comments on the proposed project priority lists. The department shall publish a notice of public hearing at least 30 days prior to the date of the hearing in a newspaper of statewide distribution. At the public hearing, the department shall provide information about the project priority lists, including a description of each proposed project.

(e) The project priority lists shall become effective and supersede all previous lists upon the first day of the federal fiscal year for which they are designated. The project priority lists, as updated during the fiscal year pursuant to Env-Dw 1105.03, shall remain in effect until such time as they are superseded by new lists.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1105.03 Management of Project Priority Lists.

(a) A project on the fundable portion of the infrastructure project or SWP project list shall be bypassed if the project will not be ready to proceed during the funding year. Projects that have been bypassed shall be placed in the contingency section and funded if the project is ready to proceed when sufficient funds become available.

(b) The project priority lists shall be continually reviewed and updated with changes, such as revised loan award dates, revised estimated construction assistance amounts, and project bypass, as necessary.

(c) If additional funds become available during the fiscal year, the department shall extend the fundable portions of the priority lists to include the next highest ranked projects on the contingency sections of the planning portions of the lists.

(d) The department shall remove a project from a project priority list when:

- (1) The project has been funded from other sources;
- (2) The project is found, based on information received by the department subsequent to the placement of the project on the list, to be ineligible;
- (3) The applicant informs the department in writing that it does not intend to pursue financial assistance from the DWSRF; or

- (4) The applicant loses its managerial or financial capability to construct and implement the project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1105.04 Intended Use Plan (IUP).

(a) For each federal fiscal year, the department shall prepare an IUP that complies with 40 CFR §35.3555 and any DWSRF guidance issued by EPA.

(b) The IUP shall include the following items:

- (1) A description of both the short-term and long-term goals and objectives of the DWSRF;
- (2) The project priority lists as specified in Env-Dw 1105.02 and the ranking system used to develop the lists;
- (3) Assurances for meeting the requirements of 42 U.S.C. §300j-12, which shall include binding commitments by the department which in the aggregate are equal to 120 percent of that fiscal year's federal capitalization grant allocations, within one year after the receipt of the grant payment; and
- (4) A disbursement schedule.

(c) The preliminary IUP shall be subject to public comments and review as specified in Env-Dw 1105.02(d) before being submitted to EPA.

(d) Funds shall be allocated starting with the highest priority project on the lists and proceeding down the list until all available funds have been allocated.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

PART Env-Dw 1106 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Dw 1106.01 Types of Assistance and Related Conditions.

(a) Financial assistance shall be in one of the following forms as requested by the applicant:

- (1) An original loan;
- (2) The refinancing or purchase of pre-existing debt obligations;
- (3) The guarantee or purchase of insurance for a local debt obligation; or
- (4) A source of revenue or security for payment of DWSRF debt obligation.

(b) Loans shall be made only with the following conditions:

- (1) Interest shall be at or below the market rate for a term not to exceed 20 years;
- (2) Principal and interest payments shall commence not later than one year after project completion;
- (3) All loans shall be fully repaid not later than 20 years after the first payment;

- (4) The recipient shall establish a dedicated source of revenue for repayment of the loan; and
  - (5) The conditions of (f), below, are met.
- (c) The refinancing or purchase of pre-existing debt obligations shall be undertaken only with the following conditions:
- (1) Interest shall be at or below the market rate;
  - (2) Such obligations shall have been incurred and construction shall have started after July 1, 1993; and
  - (3) The conditions of (f), below, are met.
- (d) The guarantee or purchase of insurance for the applicant's local debt obligation shall be undertaken only if the conditions of (f), below, are met.
- (e) The use of the DWSRF as a source of revenue or security for payment of DWSRF debt obligation shall be undertaken only if the conditions of (f), below, are met.
- (f) The DWSRF shall be used for the purposes listed in (a), above, only if the following conditions are met:
- (1) The applicant is the legal owner of the water system;
  - (2) The water system for which the project is proposed is on the state inventory of public water supplies;
  - (3) The proposed project is listed on the current infrastructure project or SWP project priority list; and
  - (4) For infrastructure and SWP-related construction projects, the project has approved plans and specifications and a construction approval issued by the department.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.02 Original Loan Agreement.

- (a) Following acceptance of the application and upon availability of funds, a loan agreement shall be executed between the state and the applicant on forms provided by the State Treasurer and obtained from the department.
- (b) The loan agreement shall contain the following information:
- (1) The loan amount;
  - (2) The interest rate for the loan;
  - (3) The term of repayment;
  - (4) The amount of the administrative fee, per RSA 486:14, I(b); and
  - (5) A description of the project.

- (c) The loan agreement shall be subject to approval by the governor and executive council.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.03 Interest Rates Established.

- (a) The interest rate charged on disbursed funds prior to the schedule completion date or substantial completion date shall be equal to one percent annually.

- (b) The interest rate charged on disbursed funds during repayment of the loan shall be:

- (1) If the applicant selects a 5-year repayment period, 25% of the market rate minus one percent;
- (2) If the applicant selects a 10-year repayment period, 50% of the market rate minus one percent;
- (3) If the applicant selects a 15-year repayment period, 75% of the market rate minus one percent; and
- (4) If the applicant selects a 20-year repayment period, 80% of the market rate minus one percent.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.04 Interest Charges.

- (a) Interest on any loan funds disbursed to the recipient shall begin to accrue on the date of each disbursement of such funds by the state.

- (b) The applicant shall pay interest charges incurred on disbursed funds:

- (1) Semi-annually, prior to the commencement of the loan repayment;
- (2) At the time of the first repayment; or
- (3) By adding the charges to the outstanding principal balance.

- (c) Interest charges during loan repayment shall be fixed over the loan repayment period.

- (d) In addition to interest, the applicant shall pay an annual administrative fee in the amount of one percent on the unpaid principal balance on all outstanding loans during the loan repayment period.

- (e) The department shall review the interest rate stipulated in the original loan agreement at the completion of the project prior to setting the final repayment schedule as outlined in the supplemental loan agreement.

- (f) If the prevailing market rate is lower than the rate established in the original loan agreement, the loan interest rate shall be adjusted downward from the initial rate based on the market rate on the execution date of the supplemental agreement.

(g) If the prevailing market rate is higher than the rate established in the original loan agreement, the loan interest rate shall be the rate stipulated in the original loan agreement.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.05 Timely Use of Funds.

(a) A recipient shall begin expenditures of funds within 6 months of the execution of the loan agreement.

(b) If a recipient fails to comply with (a), above, the department shall request the recipient to show cause why the loan agreement should not be cancelled.

(c) The department's request shall:

(1) Be in writing;

(2) Specify a date by which the recipient must respond to the request; and

(3) Inform the recipient that the recipient may request an adjudicative hearing prior to the loan agreement being cancelled.

(d) If the recipient requests an adjudicative hearing, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to such hearings.

(e) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the loan agreement.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.06 Disbursements.

(a) To obtain a disbursements for eligible work and equipment from the awarded funds, the recipient shall submit a written disbursement request to the department.

(b) The written request shall include the following, as applicable to the request:

(1) Invoices for equipment and materials delivered and properly stored;

(2) Invoices from the consultant or engineer;

(3) Payment requisitions from the contractor(s); and

(4) Invoices for eligible work not covered under (1) through (3), above.

(c) Upon approval of the request, the department shall authorize the disbursement to be made from the DWSRF.

(d) The department shall not make disbursements more frequently than monthly.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.07 Repayments.

(a) The recipient shall repay all funds received and interest accrued thereon to the department as stipulated in the supplemental loan agreement.

(b) Repayment shall:

(1) Not exceed a 20-year repayment period; and

(2) Begin by the earlier of one year following the actual completion of the project or one year following the scheduled project completion as stated in the loan agreement.

(c) Should excusable delay be incurred beyond the scheduled completion date, the commissioner, with the consent of the state treasurer, shall offer to modify the loan agreement to account for the delays. Any modification of the loan agreement shall be negotiated with and approved by the affected applicant prior to any formal modification of the loan agreement.

(d) Loans may be repaid prior to the date stipulated in the loan agreement with no prepayment penalty.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.08 Return of Funds to the Department.

(a) Financial assistance from the DWSRF shall be used and expended by the recipient solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which the financial assistance was approved.

(b) If the recipient uses any funds provided from the DWSRF for other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.09 Retainage.

(a) The recipient shall withhold 10 percent of all partial payments as retainage until 50% of the project is complete.

(b) After the project is 50% complete, no additional retainage shall be withheld from any partial payments.

(c) Upon substantial or final completion of the project, the recipient shall reduce the retainage to 2%. The final 2% retainage shall be held during the one-year warranty period and released only after the recipient has accepted the project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1106.10 Accounting. The recipient shall:

(a) Maintain each project's accounts in accordance with generally accepted accounting principles for government;

- (b) Place all funds received from the DWSRF in a project account for the sole purpose of planning, designing, and constructing or implementing the project as approved by the department;
- (c) Use all funds received from the DWSRF for the sole purpose of planning, designing, and constructing or implementing the project as approved by the department;
- (d) Provide an audit prepared by a certified public accountant or licensed public accountant to the department if so requested, which request shall not be made more than once per year;
- (e) Maintain insurance coverage on the project in an amount adequate to protect the state's investment;
- (f) Comply with any special conditions specified by the department's environmental determination until all financial obligations to the state have been discharged; and
- (g) Continually abide by the terms of the financial assistance agreement, the department's rules, and relevant state and federal statutes for operation and maintenance of the facility.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

PART Env-Dw 1107 ENVIRONMENTAL REVIEW

Env-Dw 1107.01 Environmental Review Required. Any construction project for which financial assistance from the DWSRF is requested shall be reviewed for impacts on the human and natural environment in accordance with this part.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.02 General Procedure.

- (a) The department shall be the lead agency for coordinating the environmental review process and prepare an environmental review report based on the applicant's proposed project.
- (b) The environmental review shall result in one of the following:
  - (1) A categorical exclusion (CE);
  - (2) A finding of no significant impact (FNSI); or
  - (3) A requirement for the applicant to prepare an environmental impact statement (EIS).

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.03 Categorical Exclusion (CE) Review.

- (a) The department shall review the proposed project to determine whether the project qualifies for a CE.
- (b) A CE determination shall be made if the project comprises only:
  - (1) Work on existing facilities where no new disruption of the environment will occur, such as correction of leakage, replacement of pipes in existing rights of way, or replacement or addition of equipment or small new structures on an existing site;



- (2) Work where only a small disturbance is required to upgrade a facility, such as to install hydrants on existing water mains; or
- (3) Acquisition of land for SWP purposes.
- (c) If the department determines that the project qualifies for a CE, the department shall:
  - (1) Prepare a review document describing the basis for its determination; and
  - (2) Forward the document to the New Hampshire office of energy and planning (OEP) for the intergovernmental review process and to the applicant to distribute for review and comment in accordance with Env-Dw 1107.05.
- (d) At the close of the review and comment period, the department shall make a final determination in accordance with the following:
  - (1) If no significant adverse comments are received, the department shall issue a CE as the final action; or
  - (2) If significant adverse comments are received, the department shall prepare an EA in accordance with Env-Dw 1107.04.
- (e) The department shall send its final determination in writing to the applicant and to any other person who requested during the public comment period to receive a copy.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.04 Environmental Assessment (EA).

- (a) For projects that do not qualify for a CE, the department shall prepare an EA in accordance with this section.
- (b) An EA shall contain the following information:
  - (1) The purpose of and need for the proposed project;
  - (2) A list of all environmental concerns raised by the proposed project;
  - (3) A list of alternatives to the proposed project, including a no-action alternative;
  - (4) Details of the recommended action, which shall be the proposed project or an identified alternative; and
  - (5) Mitigation measures required for the recommended action, if any.
- (c) The department shall forward the EA to the New Hampshire office of energy and planning for the intergovernmental review process and the applicant to distribute for review and comment in accordance with Env-Dw 1107.05.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.05 Public Notification and Review Period.

(a) Following the issuance of a preliminary CE determination or EA, as applicable, the department shall send a copy of the draft decision to the applicant and to OEP for the intergovernmental review process as coordinated by OEP.

(b) The applicant shall publish a notice in a local and statewide newspaper that the preliminary CE determination or EA, as applicable, is open for public comment.

(c) The notice published pursuant to (b), above, shall specify:

(1) Whether the notice is for a preliminary CE determination or an EA;

(2) The name, mailing address, and daytime telephone number of the individual representing the applicant who can answer questions regarding the proposed project;

(3) The name and location of the public place where the preliminary CE determination or EA can be reviewed or the name and daytime telephone number of the individual to contact to obtain a copy of the document;

(4) The name, mailing address, daytime telephone number, and e-mail address of the individual at the department to whom comments should be directed; and

(5) The deadline for submitting comments, which shall be no sooner than 30 days from the last date on which the notice is published.

(d) No formal action shall be taken by the department during the public review period.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.06 Department Decision.

(a) At the close of the review and comment period for a preliminary CE determination, the department shall make a determination in accordance with Env-Dw 1107.03(d).

(b) At the close of the review and comment period for an EA, the department shall make a determination in accordance with the following:

(1) If no significant adverse comments are received, the department shall issue a FNSI as the final action; or

(2) If significant adverse comments are received, the department shall direct the applicant to convene a public information meeting as follows:

a. If the applicant is a municipality, the meeting shall be convened in accordance with RSA 91-A and any other applicable local requirements; or

b. If the applicant is a non-profit entity, the meeting shall be convened in accordance with the applicant's by-laws or, if the by-laws do not contain procedures for public hearings, in accordance with the procedures for non-adjudicative hearings as specified in Env-C 200.

(c) Within 60 days of the public information meeting conducted pursuant to (b)(2), above, the department shall assess the comments and issue a written decision containing one of the following determinations:

- (1) The department shall issue a FNSI if the department finds that:
  - a. The comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment;
  - b. The benefit to the environment conferred by the project as proposed outweighs any significant adverse impact on the environment caused by the project as proposed; or
  - c. Any significant adverse impact on the environment caused by the project as proposed has been or will be addressed through another permit issued by the department, the Army Corps of Engineers, or EPA;
- (2) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the department shall order the applicant to re-review the proposed project to identify an alternative with less environmental impact;
- (3) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by modifying the project as proposed to incorporate mitigating procedures, the department shall require mitigating procedures to be implemented as a condition of receiving financial assistance from the DWSRF; or
- (4) If the department finds that the project will have a significant adverse impact on the environment that cannot be lessened or eliminated by implementing an alternative proposal or by incorporating mitigating procedures, the department shall:
  - a. Direct the applicant to initiate an EIS in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §4332, and procedures established at 40 CFR 1502 et seq.; and
  - b. Require the applicant to use a private consultant if the department finds that the applicant does not possess the requisite technical resources to prepare the EIS without the aid of a private consultant.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.07 Appeal.

- (a) Within 30 days of the date of the written department decision issued pursuant to Env-Dw 1107.06(c), any person aggrieved by the decision may file a petition for appeal with the New Hampshire water council established under RSA 21-O:7. Such petition shall be filed in accordance with the provisions of Env-WC 200.
- (b) If the 30<sup>th</sup> day falls on a Saturday, Sunday, or state legal holiday, the time period shall extend to 4:00 p.m. on the first state business day following the 30<sup>th</sup> day.
- (c) If no petition for appeal is filed within the specified period, the decision shall be final upon the expiration of that period.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1107.08 Duration of Decision. Final environmental determinations shall be valid for 5 years. If a project is not initiated within that time period, a new environmental review shall be undertaken.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

PART Env-Dw 1108 DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES FOR INFRASTRUCTURE AND SWP-RELATED PROJECTS

Env-Dw 1108.01 Consulting Contracts for Expenditures of DWSRF Funds.

(a) For all projects funded from the DWSRF that require consulting services, the contract for such services shall contain the following:

- (1) Services to be performed by the consultant;
- (2) The loan recipient's responsibilities under the contract;
- (3) The estimated time of completion of the services covered by the contract;
- (4) Compensation to be paid to the consultant; and
- (5) Termination provisions.

(b) The recipient shall comply with all applicable procedures and incidental legal requirements in awarding the consultant's contract.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.02 Plans and Specifications.

(a) The applicant shall prepare and submit plans and specifications that conform to the applicable design standards specified in Env-Ws 370 and Env-Ws 372 through Env-Ws 374 or successor rules in subtitle Env-Dw.

(b) The applicant shall submit the following with the plans and specifications:

- (1) Forms for the bid bond, statutory performance bond, and maintenance bond unless waived pursuant to Env-Dw 1109;
- (2) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;
- (3) Provisions giving authorized representatives of the department access to all construction activities, books, records, and documents for the purpose of inspection, audit, and copying during normal business hours;
- (4) Such conditions, specifications, and other provisions as are required to comply with state and federal law; and
- (5) A bid proposal that separates eligible construction from ineligible construction.

(c) The department shall approve the plans and specifications and accompanying information if they:

- (1) Meet the requirements listed in (a) and (b), above;

(2) Are consistent with all applicable state and federal statutes; and

(3) Are consistent with the planning document submitted pursuant to Env-Dw 1104.09.

(d) No changes to the plans and specifications shall be made unless the recipient obtains prior approval from the department using the procedures established in the applicable provisions of Env-Ws 370 and Env-Ws 372 through Env-Ws 374 or successor rules in subtitle Env-Dw.

(e) Approval of the plans and specifications shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.03 Contracts.

(a) The recipient shall submit construction contract documents for review and approval by the department.

(b) No construction project shall be offered for public bid until after the department has reviewed the contract documents and determined that they conform with the requirements of (c), below.

(c) The construction contract documents submitted by the recipient to the department shall contain the following information:

(1) Bidding requirements for the construction of the project;

(2) Payment bond, performance bond, notice to proceed, and related forms such as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and the format for change orders;

(3) The conditions of the contract for the construction of the project;

(4) A statement that the contract complies with all applicable federal provisions, regulations, and forms;

(5) Project design specifications as specified in Env-Ws 370 and Env-Ws 372 through Env-Ws 374 or successor rules in subtitle Env-Dw;

(6) General and supplemental conditions; and

(7) Appendices including boring logs, erosion and sedimentation control details, and other details as appropriate.

(d) The recipient shall select the lowest competitive bid. The department shall award the contract amount plus a 5 percent contingency and related engineering and administrative costs directly related to the project that are attributable to additional administrative duties outside of normal duty hours.

(e) No increases in project cost or scope shall be made without prior approval from the department. To request approval, the recipient shall submit a written request for approval of the increase(s) to the department. The request shall explain the extent of the increased costs or scope and the reason(s) for the adjustments.

(f) The department shall approve a request for an increase in project cost or scope if the following criteria are met:

- (1) The increased cost or scope was not reasonably foreseeable at the time the original project proposal was submitted;
- (2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to, labor and materials;
- (3) The item to which the cost increase is attributable is an eligible cost as specified in Env-Dw 1104.01; and
- (4) The DWSRF has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.04 Assurances. The department shall not disburse any DWSRF funds for construction until the applicant provides evidence of the following:

- (a) Approved project plans and specifications;
- (b) Agreement to develop a user charge system and water use ordinances prior to 80% of construction completion in accordance with 40 CFR Part 35;
- (c) Compliance with best available technology where applicable for primary and secondary contaminants;
- (d) Compliance with Disadvantaged Business Enterprise Requirements as specified in 40 CFR Part 31;
- (e) Agreement to maintain project financial accounts in accordance with generally accepted accounting principles for government and to maintain these accounts as separate accounts;
- (f) Certification that the water system which will be implementing the project has the necessary, legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed water treatment facilities; and
- (g) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.05 Awarding Construction Contracts.

- (a) The recipient of financial assistance from the DWSRF for a construction project shall comply with all applicable legal procedures and other legal requirements in advertising for bids and awarding the construction contract.
- (b) The text of the construction contract shall not vary from the text of the draft contract documents in the final approved plans and specifications.
- (c) The recipient shall request written approval from the department to award the construction contract by submitting proof of compliance with (a) and (b), above, in writing. The department shall approve the

award of the construction contract if it determines that all applicable requirements have been met. The applicant shall not award the construction contract until after it has received written approval to do so.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.06 Recipient's Obligations for Inspections During Construction.

(a) During the construction phase of the project, the recipient shall obtain the engineering services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(b) After the construction contract is awarded, the recipient shall provide for adequate resident inspection of the project and require assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and sound engineering principles and building practices.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.07 Department Inspections During Construction.

(a) The recipient shall allow the department to inspect the project at any time in order to confirm that:

- (1) The materials furnished meet the approved specifications; and
- (2) The project is being built in accordance with the approved plans and specifications and any approved alterations.

(b) The department shall bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications of which it becomes aware through its inspections. Upon being notified of any such variances, the recipient and the project engineer shall immediately initiate necessary action to rectify the deficiencies.

(c) In conjunction with project inspections, the department shall inspect all materials furnished to ensure compliance with the approved plans and specifications. The department shall document the manner and progress of the project, conditions relating to the materials furnished, and on the contractor's compliance with the approved plans and specifications for the project. Inspections by the department shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents nor shall it release the project engineer from determining compliance with the requirements of the contract documents.

(d) In the event the department determines that procedures or materials are not in conformity with the approved plans and specifications, the department shall order the recipient to take action in the manner provided for in the construction contract to correct any such deficiency.

(e) If the recipient's project engineer disagrees with the department as to whether material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the project engineer to reject questionable materials and initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(f) The contractor and recipient shall provide the department with every reasonable accommodation for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(g) In addition to normal testing procedures required of the recipient, the department shall require such additional tests of building materials and processes as the department determines to be necessary to demonstrate compliance with the approved plans and specifications and any approved alterations thereto during the building of projects financed in whole or in part by DWSRF funds. All tests, whether for the department or the project engineer, shall conform to current American Water Works Association standards as specified in Env-Ws 307 or successor rules in subtitle Env-Dw, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the New Hampshire department of transportation published procedures, or similar criteria, as applicable to the specific materials and processes proposed by the recipient to be used in the project. The department shall specify which tests are applicable based on the specific materials and processes proposed by the recipient to be used in the project. Samples for testing shall be furnished free of cost to the department upon request on the construction site.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.08 Project Modifications.

(a) For purposes of this section:

- (1) “Materially or significantly affect project cost or estimated revenues” means a change in estimated costs or revenues of more than 10%; and
- (2) “Materially or significantly affect project design” means a change that would:
  - a. Alter the project’s performance standards; or
  - b. Alter the type of water treatment provided by the project;
  - c. Delay or accelerate the project schedule by more than 10%; or
  - d. Alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project, such that amended plans and specifications are required under RSA 485:8 or the applicable sections of Env-Ws 300 or successor rules in subtitle Env-Dw.

(b) After an application for financial assistance has been approved by the department, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to, or departure from the approved plans and specifications which would materially or significantly affect project cost, estimated revenues, or project design without the prior written approval of the department.

(c) The recipient shall request approval for any changes, modifications, or amendments to, or departure from the approved plans and specifications which would materially or significantly affect project cost, estimated revenues, or project design in accordance with Env-Dw 1108.09.

(d) No prior departmental approval of project change orders shall be required if applicant’s project engineer certifies to the department that such change, modification, amendment, or departure:

- (1) Will not materially or significantly affect project cost, estimated revenues, or project design; and
- (2) Is consistent with the objectives of the project and within the scope of the assistance agreement.

(e) A change of project scope, such as the addition of new construction items, shall not be eligible for additional funding after loan closing unless one of the following conditions are met:



(1) The change of scope is necessary due to an oversight, and is needed for an inoperable water system and not to replace faulty construction or equipment already funded; or

(2) The change of scope is necessary due to changes in federal or state requirements.

(f) The amount of funding provided from the DWSRF shall be increased only by a formal amendment in writing with the department, New Hampshire business finance authority, and state treasury, with governor and council approval.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.09 Approval of Project Modifications.

(a) The recipient shall request approval for any changes, modifications, or amendments to, or departure from the approved plans and specifications which would materially or significantly affect project cost, estimated revenues, or project design by submitting the following information in writing to the department:

(1) The name of the recipient and the name and location of the recipient's water system;

(2) The date of the loan agreement;

(3) A description of the modification(s) for which the recipient is seeking approval;

(4) The reason why the modification(s) are necessary; and

(5) The consequences to the water system and to public health and the environment of the department not approving the modifications.

(b) The department shall approve the requested modification(s) if:

(1) The scope of the project as modified is consistent with the original intent of the financial assistance; and

(2) The project as modified will bring the water system into compliance with the Act, RSA 485, and Env-Ws 300 or successor rules in subtitle Env-Dw.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.10 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit:

(a) A notice of completion of construction to the department, upon completion of project construction; and

(b) Any other building phase submittals required as part of the financial assistance documents-for the department's approval.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.11 Implementation Phase Reporting Requirements. During the implementation phase of a SWP project, the recipient shall submit a report of the progress achieved to the department quarterly.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.12 Final Inspection and Audit.

(a) Upon completion of any project for which financial assistance from the DWSRF has been provided, the applicant shall furnish to the department written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required, the department shall conduct a final on-site inspection of the project and an audit of any and all financial assistance funds furnished to the applicant.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1108.13 Certification. The recipient shall certify in a letter to the department that any facility constructed from funds made available through the DWSRF is being operated and maintained so as to meet drinking water quality standards one year after the initiation of operation.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

#### PART Env-Dw 1109 WAIVERS

Env-Dw 1109.01 Purpose. The rules in this chapter apply to a variety of situations. It is recognized that strict compliance with all rules may not always be in the best interests of the public or the DWSRF in every conceivable situation. The department therefore establishes these procedures and criteria, in accordance with RSA 541-A:22, IV, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the DWSRF.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1109.02 Procedures.

(a) Any person who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1100 may request a waiver thereof.

(b) Each request for a waiver shall be filed in writing.

(c) Each request for a waiver shall include the information specified in Env-Dw 1109.03.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1109.03 Content and Format of Requests.

(a) The person requesting the waiver shall provide the following information:

- (1) The name, mailing address, and daytime telephone number of the applicant;
- (2) The project to which the waiver request relates;

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- (3) The number(s) of the specific section(s) of the rules for which a waiver is sought;
  - (4) A full explanation of why a waiver is being requested, including an explanation of the hardship that would be caused by compliance with the rule;
  - (5) If applicable, a full explanation of the alternate that is proposed to be substituted for the requirement in the rule, including written documentation and/or data to support the alternative; and
  - (6) A full explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Dw 1109.04.
- (b) The person(s) requesting the waiver shall sign the request.
- (c) The signature(s) shall constitute certification that:
- (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
  - (2) The signer understands that any variance granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

Env-Dw 1109.04 Criteria. The department shall grant the requested waiver if:

- (a) The requirement is not mandated by state or federal statute;
- (b) Granting the waiver, conditional upon implementation of alternatives, if proposed, will result in circumstances that are as protective of the public and the integrity of the DWSRF program as the requirements contained in this chapter; and
- (c) Granting the waiver, conditional upon implementation of alternatives, if proposed, will not adversely impact the department's obligations under RSA 486 and obligations associated with maintaining primacy from the EPA.

Env-Dw 1109.05 Decisions. The department shall notify the person requesting the waiver of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

Source. (See Revision Note at chapter heading for Env-Dw 1100) #8702, eff 8-24-06

### APPENDIX

Rule Section(s)	State Statute(s) Implemented	Federal Requirements Implemented
Env-Dw 1101 – 1105	RSA 486:14, I	42 U.S.C. sections 300f - 300j-26
Env-Dw 1106	RSA 486:14, I; RSA 486:14, III	42 U.S.C. sections 300f - 300j-26
Env-Dw 1107 – 1108	RSA 486:14, I	42 U.S.C. sections 300f - 300j-26
Env-Dw 1109	RSA 541-A:22, IV	----